

ARKANSAS SUPREME COURT

No. CR 06-1304

TERRANCE JOHNSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 24, 2007

PRO SE MOTION TO FILE
SUPPLEMENTAL BRIEF [CIRCUIT
COURT OF JEFFERSON COUNTY, CR
2003-1021, HON. ROBERT H. WYATT,
JR., JUDGE]

MOTION DENIED.

PER CURIAM

Appellant Terrance Johnson was convicted of first-degree murder, committing a terroristic act, and discharging a firearm from a vehicle, and sentenced as a habitual offender to an aggregate term of 528 months' imprisonment. The Arkansas Court of Appeals affirmed. *Johnson v. State*, CACR 04-1275 (Ark. App. Sept. 28, 2005). Appellant timely filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. Counsel appointed to represent appellant on the Rule 37.1 petition filed a notice of appeal and was subsequently relieved as counsel. On the same day that appellant, proceeding pro se, filed his brief-in-chief in this court, he also filed the instant motion seeking leave to file a supplemental brief.

In the motion appellant states that the trial court failed to rule on an issue when it addressed the Rule 37.1 petition and that he has filed a motion in the trial court asking the court to make a ruling now. He desires to file a supplement to his brief in this appeal as soon as he receives the court's order on the issue.

We must deny the motion because appellant chose to file a notice of appeal from the court's order and proceed with an appeal to this court rather than seeking a ruling on the omitted issue when he had the opportunity to do so. We have held that a petitioner under Rule 37.1 is entitled to request that the court modify its order to include a ruling on an issue that was not addressed in the court's order. *Rutledge v. State*, 361 Ark. 229, 205 S.W.3d 773 (2005) (per curiam). Such a request does not constitute a request for rehearing that is prohibited by Rule 37.2(d). *Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000) (citing *Matthews v. State*, 333 Ark. 701, 970 S.W.2d 289 (1998) (per curiam)). It is the appellant's obligation to obtain a ruling on any omitted issues in order to preserve those issues for appeal, and the filing of a motion to consider an omitted issue allows an appellant a means to have all issues addressed by the court. *Id.*

When the appellant here filed a notice of appeal and pursued his appeal to this court, the trial court lost jurisdiction to enter any further rulings on the Rule 37.1 petition. Even if the court were to enter a second order pertaining to the omitted issue, the order would be of no effect as the court's jurisdiction to consider the issues raised in the Rule 37.1 petition ended upon appellant's perfecting the appeal to this court. *See Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996).

Motion denied.